

**Environmental Quality Council
Water Policy Subcommittee**

1999-2000

Work Plan

September 23, 1999

Introduction

The Environmental Quality Council (EQC) is a seventeen member bipartisan interim committee of the Montana Legislature. The EQC has agreed on a work plan for the 1999-2000 interim and has appointed a Water Policy Subcommittee to address the EQC's water policy responsibilities pursuant to 85-2-105, MCA. This work plan sets forth the subcommittee's strategy for fulfilling its responsibilities. The work plan was adopted by the EQC on September 23, 1999.

The work plan is a flexible document. The subcommittee will refine its goals and tasks as information is gathered and evaluated. Key decision-making points are highlighted in the timeline.

The work plan includes the following elements:

- Introduction
- Background information
- Goals
- Policy and oversight issues
- Other statutory responsibilities
- Timeline
- Appendices

Background Information

Statutory responsibilities

The water policy duties of the EQC are set forth in section 85-2-105, MCA. This section was amended by House Bill 458 in 1999 to add assistance with interagency coordination to the EQC's duties. The EQC's water policy duties (effective October 1, 1999) are paraphrased below and are presented in the Appendix.

1. Advise the Legislature on the **adequacy of Montana's water policy**.
2. Advise the Legislature on **important state, regional, national, and international developments** that affect Montana's water resources.
3. Oversee **policies and activities of executive branch agencies** and other state institutions that affect Montana's water resources.
4. Assist with **interagency coordination** related to Montana's water resources.
5. **Communication with the public** about water policy and water resources.
6. Analyze and comment on the **State Water Plan**, when prepared by the Department of Natural Resources and Conservation (DNRC).
7. Analyze and comment on the **Renewable Resource Grant and Loan Program**

- report.
8. Analyze and comment on **water related research** undertaken by state entities.
 9. Analyze, verify and comment on the information in the **Water Information System of the Natural Resource Information System (NRIS)**.
 10. Report to the Legislature.

Subcommittee members

Senator Bea McCarthy, Chair
Representative Bill Tash
Senator Jon Tester

Subcommittee staff

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Goals

- Carry out the EQC's statutory responsibilities related to water policy.
- Be informed about current water policy issues.
- Provide information and recommendations to EQC members and other legislators about current water policy issues, focusing on issues that are likely to be discussed by the 2001 Legislature.
- Provide advice to Executive Branch agencies regarding implementation of water laws and programs.
- Provide advice to federal agencies on proposed actions that affect implementation of Montana's water policies.
- Develop proposed legislation, if necessary, to address water policy issues. Review new court decisions, U.S. Environmental Protection Agency (EPA) decisions, and federal laws and regulations to determine if changes to Montana's laws are needed.
- Evaluate the availability and use of current water quality data. Analyze water quality data to determine if the quality of Montana's ground water and surface water is improving, declining or stable. Identify the reasons for changes in water quality.
- Investigate concerns about the potential impact of large hog farms and increased

recreational use of rivers on water quality. If necessary, identify measures to mitigate impacts. Encourage an appropriate role for Montanans in the management of river recreation on federal lands.

Potential Policy and Oversight Issues

The EQC is required to:

- (a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;*
- (b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state.(85-2-105(2), MCA)*

In order to fulfill these responsibilities, the Water Policy Subcommittee proposes to address the following issues. The subcommittee will shift its priorities to address other issues as the need arises.

Water quality monitoring, assessment and improvement

The Montana Department of Environmental Quality (DEQ) is continuing to implement HB 546, a bill passed in 1997 that addressed water quality monitoring, assessment and improvement, including total maximum daily loads or TMDLs. The Statewide Technical Advisory Group provides advice to the DEQ.

The EPA has issued draft revised regulations governing (TMDLs) and listing of water bodies.

Two lawsuits filed against the EPA concerning the EPA's responsibilities related to TMDLs in Montana are pending.

Subcommittee actions: Review the EPA's proposed TMDL regulations and develop recommendations for comments from the EQC to the EPA. Monitor litigation related to Montana's water quality laws and evaluate whether or not to address any policy issues that result from court decisions. Learn about local TMDL development near EQC meeting places.

Timeline: Comments on proposed EPA rules due October 22, 1999.
Other actions as needed.

Water Quality Trends

The EQC is required to:

(1) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective, analyze and interpret the information for the purpose of determining whether the conditions and trends are interfering or are likely to interfere with the achievement of the policy set forth in 75-1-103, and compile and submit to the governor and the legislature studies relating to the conditions and trends. (75-1-324, MCA)

The 1996 EQC Report *Our Montana Environment . . . Where Do We Stand?* presented some information about trends in Montana's water quality but it does not tell what we know about trends in water quality for different water bodies, the causes for those trends and how they relate to public health or other measures.

Subcommittee action: Briefing on availability and use of water quality data and trends in water quality by appropriate agency staff. Analyze trends in water quality and reasons for those trends. Make recommendations for improvement, if warranted.

Timeline: Briefing at December subcommittee meeting.

Montana's water quality standards

The EPA disapproved some of Montana's water quality standards in December 1998 and January 1999. The Montana Legislature subsequently passed Senate Bill (SB) 499 which amended Montana's Water Quality Act. The DEQ has requested EPA approval of Montana's Water Quality Act as amended. As of August 1999, the EPA had approved several of Montana's water quality standards; however, some issues remain.

Subcommittee action: Monitor progress. Brief EQC. Review EPA's approval letter and determine if further action is needed.

Timeline: Discuss at September 1999 subcommittee meeting.

River recreation

There is concern about potential adverse impacts on water quality as a result of increased recreational use of Montana's rivers due to the bicentennial celebration of the Lewis and Clark expedition. In some cases, federal agencies are responsible for management of river recreation. The subcommittee wants to encourage an appropriate role for Montanans in management decisions.

During the 1999 legislative session, SB 445 was introduced to implement

recommendations of local groups to address recreational use of the Beaverhead and Big Hole rivers. The bill was amended substantially and ultimately vetoed by Governor Racicot. The Fish, Wildlife and Parks Commission has adopted temporary regulations limiting commercial use of these rivers while a long-term management plan is developed.

HB 629 required the Department of Fish, Wildlife, and Parks (DFWP) to undertake a comprehensive study of the Blackfoot River and report its findings to the 57th Legislature. While a major focus of the study is conflict among landowners, outfitters, and private recreationists, the DFWP is also required to address the following topics that relate to water policy: ways to protect the integrity of the river's resources, while continuing to accommodate recreational use; the impact of heavy recreational use on the river's fish, wildlife, streambanks, and water quality; and the amount and scope of use by recreationists that the river is capable of sustaining. This study could result in proposed legislation.

Subcommittee actions: Evaluate impacts on water quality from increased recreational use of rivers. Request information from the Bureau of Land Management on its plans and strategies to mitigate the impacts of river recreation on water quality and riparian areas. Request information from DFWP on the Blackfoot River study. Report from DFWP, Big Hole Watershed Committee and Beaverhead County Community Forum on management plan development.

Timeline: Letter to BLM September 1999. Briefing on DFWP Blackfoot River study, Lewis and Clark Bicentennial management plans, and Big Hole/Beaverhead Management plans March and possibly September 2000. Review water quality trends and impacts from recreational use of rivers December 1999.

Water quality impacts of large hog farms

Concerns have been raised that more and more large hog farms will be located in Montana with potential adverse effects on water quality. The DEQ has issued a *Draft Strategy for Improving Water Quality Compliance from Concentrated Animal Feeding Operations* (CAFOs). The deadline for written comments was July 30, 1999. A draft general permit for Concentrated Animal Feeding Operations was issued for public comment during the summer of 1999.

Subcommittee action: Briefing from DEQ and others on impacts of hog farms, current status and the regulatory framework including the CAFO strategy and/or the general permit and comments received. Investigate concerns about the potential impact of large hog farms on water quality. If necessary, identify measures to mitigate impacts. Review information from other states and European countries.

Timeline: Briefing at December 1999 subcommittee meeting.

Water leasing

The Montana DFWP is required to submit a progress report to the EQC by December 1 of each year on their pilot instream flow leasing "study." In addition to the DFWP program, there are two different temporary sections of law that authorize leasing of water for instream flows.

Subcommittee action: Briefing on DFWP's annual report. Briefing on implementation of other water leasing laws from the Upper Clark Fork River Basin Steering Committee, DNRC, and/or other interested organizations.

Timeline: Receive DFWP report December 1, 1999. Briefing on leasing programs January 2000.

Avista water rights

Avista Corporation (formerly Washington Water Power) and Governor Racicot signed an agreement regarding Avista's water rights in January 1999. The agreement entails a temporary mutual moratorium. Avista agreed not to initiate a call upon junior water right holders and the Legislature passed SB 468, a bill temporarily closing the Clark Fork River Basin to new consumptive uses until February 28, 2001. Meanwhile, the State and Avista agreed to participate in a negotiation process to resolve the issues concerning Avista's water rights. The negotiation has resulted in the execution of the *Working Agreement to Protect the Security of Existing Rights and to Preserve Options for the Orderly Development of Waters in the Clark Fork River Basin Upstream of the Noxon Rapids Hydroelectric Project* in June 1999.

The State and Avista have agreed to begin a public collaborative process to gather information from existing and potential water users in the Clark Fork River Basin to help shape an "Existing Water User Protection Agreement" which is intended to establish mutually agreeable terms and conditions for basin closure legislation to be submitted to the 57th Montana Legislature.

The EQC may also be interested in learning about the innovative approach that was

used in the U.S. Federal Energy Regulatory Commission (FERC) relicensing process and fish enhancement plans and other measures that Avista has committed to develop and implement through the relicensing process.

Subcommittee action: Briefing for full EQC on current status and potential proposed legislation. Advise Executive Branch as needed.

Timeline: Briefing at September 22-23 EQC meeting in Libby. Draft legislation to be completed by DNRC for Executive Branch review process by September 1, 2000.

Nonpoint source BMPs

SJR 3, a resolution introduced by request of the EQC and approved by the 1999 Legislature, recommends that state agencies serve as role models for the implementation of Best Management Practices (BMPs) to reduce nonpoint source water pollution. The resolution recommends that the EQC make a priority of requesting the appropriate Montana agencies to report to the EQC prior to the next legislative session on their progress in implementing BMPs for nonpoint source pollution.

Subcommittee action: Recommend that the EQC send a letter to state agencies with a copy of the resolution indicating that the EQC encourages state agencies to serve as role models. Recommend that the EQC ask state agencies to report to the EQC on their progress.

Timeline: Letter for review at September 1999 EQC meeting. State agency reporting May, July, September 2000.

Confederated Salish and Kootenai Tribes v. Bud Clinch

This lawsuit challenged the permitting provisions of the Montana Water Use Act. The tribes assert that the DNRC has no authority to grant water use permits on the Flathead Indian Reservation until the Tribes' water rights have been quantified. If the court makes a decision, legislation may or may not be proposed in response to the decision.

Subcommittee action: Briefing on decision. Identify and become informed about any issues that may be addressed through legislation.

Timeline: After court decision.

Federal Clean Water Action Plan

The Clean Water Action Plan was developed by federal agencies and published in February 1998. One outcome of the Clean Water Action Plan is that one half of the "319" funds that the DEQ receives from the EPA must go to watersheds targeted in the

Unified Watershed Assessment.

The Wyoming Association of Conservation Districts has filed a lawsuit challenging the legality of the adoption of the Clean Water Action Plan by the Clinton Administration.

The Clean Water Action Plan directs the federal Agriculture and Interior departments to develop a unified federal policy for ensuring a watershed approach to federal land and resource management. A working draft of the unified federal policy has been circulated for informal comment. The agencies intend to publish the draft in the Federal Register during the summer of 1999. The policy is limited to federal lands and resources; however, federal activities that affect watersheds will likely affect non federal lands.

Subcommittee actions: Ask DEQ staff to brief the subcommittee about the process for developing the Montana Unified Watershed Assessment and the effect of targeting funds to watersheds identified in the Assessment. Invite comments from interested parties. Review the draft Unified Federal Policy for Ensuring a Watershed Approach to Federal Land and Resource Management. Recommend comments if warranted. Monitor lawsuit by Wyoming Association of Conservation Districts.

Timeline: As needed.

Coal bed methane production

In response to an interest in coal bed methane development in southeastern Montana, the DNRC has issued a proposal to establish the Powder River Basin Controlled Ground Water Area. The proposal only addresses coal bed methane extraction wells. Other ground water withdrawals would be subject to the same requirements as wells outside of a controlled ground water area. Withdrawal of ground water in association with coal bed methane extraction would be prohibited within the controlled ground water area without first obtaining a permit from the Board of Oil and Gas Conservation. The Board of Oil and Gas Conservation would be required to conduct a programmatic environmental review prior to issuing permits. The DNRC is conducting hearings and taking formal comments on September 22 and 23, 1999.

Subcommittee action: Briefing from DNRC.

Timeline: December 1999 meeting.

Other issues

The Water Policy Subcommittee will review other issues as the need arises and will inform the EQC about important Montana water issues. Members will brief the EQC on the activities of the Legislative Leadership Council on River Governance , a

multi-state policy forum which includes legislators from Oregon, Washington, Idaho, and Montana.

Timeline: As needed.

Other Statutory Responsibilities

Interagency coordination

Effective October 1, 1999, the EQC is required to "assist with interagency coordination related to Montana's water resources." Interagency coordination on water issues is accomplished through the Montana Watershed Coordination Council.

Subcommittee action: Staff will participate in Watershed Coordination Council meetings and assist with coordination activities as time allows. EQC will assist with interagency coordination as needed.

Timeline: Watershed Coordination Council meets quarterly.

Communication with the public

The EQC is required to communicate with the public on matters of water policy as well as the water resources of the state.

Subcommittee action: The EQC and the Water Policy subcommittee will continue to encourage public participation in EQC and Water Policy subcommittee meetings. The EQC will hold meetings in different parts of the state and will seek out opportunities to discuss water issues with area residents. The EQC will continue to distribute publications that help citizens understand Montana's water law and water resource issues. Staff will publish a brief update to *Wading into Montana Water Rights* to reflect current law. Staff will revise *A Guide to Montana Water Quality Regulation* to reflect changes approved by the 1999 Montana Legislature and to include a short-primer section about TMDLs. DEQ staff are distributing the EQC publication *Montana's Revised Water Quality Monitoring, Assessment, and Improvement Program* to conservation districts and other interested parties.

Timeline: Update of publications by December 31, 1999. Other actions as needed.

State Water Plan

The EQC is required to analyze and comment on the state water plan, when filed by the DNRC. The DNRC intends to develop a new State Water Plan section this interim.

Subcommittee action: Provide advice to the DNRC and the EQC on the proposed state water plan section.

Timeline: As needed.

Renewable Resource Grant and Loan Program Report

The EQC is required to analyze and comment on the report of the status of the Renewable Resource Grant and Loan Program.

Subcommittee action: The subcommittee recommends that the report be presented to the full EQC and that members be encouraged to provide comments.

Timeline: July 2000.

Research

The EQC is required to analyze and comment on water-related research undertaken by any state agency, institution, college, or university.

Subcommittee action: Review past and proposed research projects to identify information related to subcommittee work plan issues. Make suggestions regarding research needs related to work plan issues. Staff participation in the Ground Water Assessment Steering Committee, as time allows. Staff participation in the Montana University System Water Center research grant review panel.

Timeline: As needed.

Water Information System

The EQC is required to "analyze, verify and comment on the adequacy of and

information contained in the water information system maintained by the natural resource information system under 90-15-305." See also the "water quality trends" item under "Policy and Oversight Issues."

Subcommittee action: Briefing on water quality trend data in the Water Information System. Provide suggestions and comments, focusing on data related to work plan items.

Timeline: December 1999.

Timeline

The timeline based on the EQC meeting timeline. Subcommittee meetings will take place on or before the EQC meeting and the timeline will be revised as subcommittee meeting dates are set.

1999

Sept. 22-23 EQC meeting, Libby. Brief subcommittee meeting (1 hour)

- ◆ Review proposed EPA TMDL Regulations
- ◆ Review letter to BLM re: river recreation
- ◆ Report to EQC on: proposed Powder River Basin Controlled Ground Water Area, Montana's Bull Trout Recovery Plan, partial EPA approval of Montana's water quality standards, encouraging use of BMPs by state agencies, general CAFO permit and subcommittee work plan.

Oct. 22 Deadline for comments on proposed EPA regulations

Dec. 2 EQC meeting (subcommittee meeting afternoon or evening before)

- ◆ Water quality trends/water information system -- briefing
- ◆ Water quality impacts of hog farms -- briefing
- ◆ Proposed Powder River Controlled Ground Water Area -- briefing

Dec. 31 Completion of updates to water quality publications

2000

Jan. 21 EQC meeting (subcommittee meeting afternoon or evening before)

- ◆ DFWP water leasing program report
- ◆ Other water leasing programs -- presentation
- ◆ Decision on approach to draft report to Legislature

March 24 EQC meeting (subcommittee meeting afternoon or evening before)

- ◆ River recreation

May 5 EQC meeting (subcommittee meeting afternoon or evening before)

- ◆ Last date to decide on content of draft reports and concepts for proposed legislation if public review and comment is desired.
- ◆ Unified Watershed Assessment and impact of targeting federal

- ♦ funds -- report from DEQ.
 - ♦ Possible state agency BMP reporting
- May 6-
June 16** Last dates to revise and distribute draft reports and concepts for proposed legislation for public review and comment, if desired.
- July 14** Compile and distribute comments on draft documents (if any) to subcommittee members.
- July 28** **EQC meeting (subcommittee meeting afternoon or evening before)**
 - ♦ Briefing on potential non EQC legislative proposals (if any) related to water policy.
 - ♦ Final subcommittee decision on any recommendations to EQC for proposed legislation.
 - ♦ Subcommittee briefs EQC on any potential EQC legislative proposals.
 - ♦ EQC briefing on Renewable Resource Grant and Loan Program
 - ♦ Possible state agency BMP reporting.
- Sept. 16-17** **EQC meeting (subcommittee meeting afternoon or evening before)**
 - ♦ Final decision by EQC on content of proposed legislation, if any. Selection of bill sponsors. Development of strategy.
 - ♦ Briefing on potential legislative proposals (if any) related to water policy.
 - ♦ Briefing on DFWP Blackfoot River study and Big Hole/Beaverhead Management plans.
 - ♦ Possible state agency BMP reporting.

Appendix

85-2-105. Environmental quality council -- water policy duties. (1) The environmental quality council shall meet as often as necessary, including during the interim between sessions, to perform the duties specified within this section.

(2) On a continuing basis, the environmental quality council shall:

- (a) advise the legislature on the adequacy of the state's water policy and on important state, regional, national, and international developments that affect Montana's water resources;
- (b) oversee the policies and activities of the department, other state executive agencies, and other state institutions as those policies and activities affect the water resources of the state;
- (c) assist with interagency coordination related to Montana's water resources; and
- (d) communicate with the public on matters of water policy as well as the water resources of the state.

(3) On a regular basis, the environmental quality council shall:

- (a) analyze and comment on the state water plan required by 85-1-203, when filed by the department;
 - (b) analyze and comment on the report of the status of the state's renewable resource grant and loan program required by 85-1-621, when filed by the department;
 - (c) analyze and comment on water-related research undertaken by any state agency, institution, college, or university;
 - (d) analyze, verify, and comment on the adequacy of and information contained in the water information system maintained by the natural resource information system under 90-15-305; and
 - (e) report to the legislature as provided in 5-11-210.
- (4) The legislative services division shall provide staff assistance to the environmental quality council to carry out its water policy duties.

SUMMARY OF EQC HB 546 IMPLEMENTATION OVERSIGHT FINDINGS AND RECOMMENDATIONS

The Environmental Quality Council's findings and recommendations from their oversight of HB 546 implementation are summarized below. Staff comments (as of July 1999) have been added to provide information on the current status.

General Findings and Recommendations

1. During the 1997-98 Interim, the DEQ focused on hiring the staff authorized for program expansion, developing preliminary guidance documents regarding the decisions they need to make regarding the 303(d) list, preparing the statutorily-required schedule for completion of TMDLs, and initiating outreach to Conservation Districts, local groups, and the public. The program is now fully staffed and getting up to speed. They have succeeded in converting some 319 and other projects into submittable TMDLs, and are working to convert more. Point-source TMDLs are continuing to be submitted to the EPA via the MPDES permitting process.
2. Montana is a landmark state in how they have decided to address, through state legislation, the federal Clean Water Act requirements to monitor and assess waters and develop TMDLs. Although other states have been less willing to move forward in TMDL development, Montana is trying to address the problem and ensure the state retains primacy over water programs.
3. There is concern regarding the need to fund the program, but what sources are appropriate to do so. Since the mandate is from the federal Clean Water Act, there is legislator interest in encouraging federal contributions to program implementation without disrupting traditional grant program uses of such funds.
4. The Subcommittee supports creative, voluntary solutions to water quality problems (e.g. the Deer Lodge land application of effluent to reduce nitrates in the Clark Fork River), and encourages the DEQ to consider and bring to the next EQC any policy proposals to increase incentives for such creative solutions.
5. In general, the recommendations in this report are in the vein of going slowly, not rushing to make changes to the new statutes, and allowing the program to continue to develop.
6. The next EQC should continue to provide legislative oversight of the DEQ's efforts to implement the provisions of HB 546. This effort should involve coordination and communication with the Statewide TMDL Advisory Group. Oversight should include discussions, where applicable, of state policy and other issues related to a successful TMDL program.
7. The Subcommittee recommends that the "primer" (the first four chapters of this legislative report, plus relevant appendices) be published as an independent guide. Prior to publishing it independently, however, it should be afforded broader review and subsequent refinement.

Topic-Specific Recommendations

Effluent Trading

- The effluent trading topic should be considered for inclusion in EQC HB 546 implementation oversight next Interim. Options for Council activities related to this topic include: an update on the EPA's finalization of their guidance for trading (due 12/99) and related demonstration projects, polling a few point source dischargers in Montana to determine their interest in trading, checking back on related activities on the Clark Fork, requesting the DEQ to notify the EQC if there is an interest in trading outside of TMDLs, and working with the DEQ to evaluate whether or not policy issues need to be addressed.

Staff update/comment: DEQ staff told the Water Policy Subcommittee that there had been little interest in effluent trading from point source dischargers. DEQ staff report no change.

Definition of Threatened

- The Subcommittee recommends that the definition of threatened also be a topic included in Council oversight of HB 546 implementation next Interim. The DEQ should provide an update to the next EQC on the effect the new definition is having on 303(d) list entries and on the ability to obtain funding for, and to address water quality issues on, those water bodies likely to be removed from the list due to the new definition. EQC staff should coordinate with DEQ and other states to assess the regional approach to this issue; if some conclusions result that are agreeable to Montana, suggestions could be made to the EPA for changes or refinements to their guidance to states on this subject.
- The Subcommittee discourages statutory changes this Session, but recommends the Statewide TMDL Advisory Group (STAG) and other interested parties begin discussions to determine if they feel the definition of threatened needs to be revised in statute. The STAG should report back to the Subcommittee or Council on the results of these consultations.

Staff update/comment: EPA is expected to issue draft regulations that address this issue during the summer of 1999. It is probably premature to evaluate the definitions.

Use Support/Classification

- Similar to the preceding recommendation, the Subcommittee discourages related statutory changes this Session, but recommends that the Statewide TMDL Advisory Group (STAG) and other interested parties get together to determine if they feel there need to be statutory changes to address use support and classification issues. The STAG should report back to the Subcommittee or Council on the results of these consultations.

Sufficient Credible Data

- The Subcommittee acknowledges that voluntary monitoring, with proper training, can be a

valuable component in water quality data gathering. They also acknowledge that the DEQ is in a time crunch to get a lot of work done in a short time. They commend the Montana Watercourse training efforts related to voluntary water quality monitoring and related coordination between the Volunteer Monitoring program and the DEQ, to enable mutual benefit. The next Council should include in its HB 546 implementation oversight a review of the role volunteer monitoring is playing in TMDL implementation in Montana.

Staff update/comment: DEQ has developed criteria for sufficient credible data for determining beneficial use support (see previous recommendation) with the advice of the Statewide Technical Advisory Group.

Septic Issues Raised in the Clark Fork Voluntary Nutrient Reduction Program (Surface Water/Ground Water Interactions)

- The Subcommittee recommends the next EQC consider the entries in the Clark Fork Voluntary Nutrient Reduction Program (VNRP) as a valuable informational resource in any further consideration of septic issues in Montana. If the proposed State Water Plan chapter on Surface Water/Ground Water Interaction is likely to be initiated next Interim, the next EQC could recommend the issues presented here, and the strategies included in the VNRP, be revisited in that process.
- The Subcommittee supports DEQ's efforts to deal with the existing overlapping jurisdiction of subdivision review, which includes sewage system approval. They also support DEQ's plan to establish a technical review committee to evaluate current standards for site-specific waste water systems to make sure they are providing necessary protection of public health and the environment and to help identify new and/or more effective technology. Lastly, they support (and encourage the next EQC to track, if relevant) the efforts of DEQ's "cluster team" in developing means to promote clustering of residential units. The next EQC should request updates on these efforts where relevant.

Staff update/comment: These issues are not specific to HB 546. The Montana Consensus Council has been asked to assist with examining the issue of dual regulation under the Sanitation in Subdivisions Act. The Consensus Council staff want to know if the EQC or EQC members are interested in being involved. Being involved might mean participating in a consensus process as a representative or as part of a group that is represented by someone else. At a minimum, it would probably mean being interviewed by Consensus Council staff. The EQC may simply want to be briefed on this process. The EQC may also want to hear about the efforts of the cluster team to address septic regulations.

Water Quantity Relationships

- The Subcommittee recommends exploration of potential cooperative opportunities to mesh efforts at solving streamflow-related water quality impairment problems with state drought planning efforts.

Staff comment/update: currently coordination takes place through the Watershed Coordination

Council and local watershed groups.

- The Subcommittee recommends continued Montana representation on the Legislative Leadership Council for River Governance. Montana's delegates to this Council should request further exploration of this issue and development of options for action, if appropriate.

Staff comment/update: included in draft work plan.

Best Management Practices (BMPs)

- The Subcommittee recommends that appropriate entities work with the land user groups to enhance development of realistic and practical BMPs for voluntary application within their industry. BMP development/refinement should be followed up with an informational effort on: purpose, area applicability, and economic and environmental benefits.

Staff comment/update: The Land Use/Environmental Trends Subcommittee will be addressing BMPs for residential development in riparian areas.

- The Subcommittee recommends public agencies set an example for others by adopting BMPs for potential nonpoint source pollution generating facilities and activities.

Staff comment/update: Included in draft work plan.

- The DEQ's planned update and revision of their Nonpoint Source (NPS) Management Plan provides a unique opportunity to fulfill an EPA mandate (to update the Plan) and be creative in working with stakeholders to further research, develop, and describe voluntary BMPs for nonpoint source land uses. The department should check on whether such plans could take the format of individual "guides" for nonpoint source pollution generators. If so, the department should develop helpful technical and informational guidance materials to both fulfill the federal mandate, as well as fulfill the HB 546 mandate to "develop and promote" a system of reasonable land, soil, and water conservation practices.
- The EQC should work with others to document what incentive programs exist in Montana and elsewhere for implementation of nonpoint source BMPs (beyond those incentives documented for the EQC BMP mini-seminar). There are a number of programs available in Montana where assistance is provided only if appropriate conservation practices are utilized. There are also innovations in other states; for example, Utah's Agricultural Resource Development Loan Program which offers low-interest loans for voluntary BMP implementation associated with agricultural lands. Any information generated on incentives could be incorporated into the BMP information documented for, and provided to, landowners as part of the NPS Plan update (see preceding recommendation).

Staff update/comment: The Land Use/Environmental Trends committee may evaluate dissemination of information about BMPs to landowners. There are a number of programs that distribute this type of information. The EQC may want to consider whether or not this activity would be duplicative (see next set of recommendations).

Interagency Coordination

- Rather than taking a position on whether the Memorandum of Understanding (MOU) should be extended, the Subcommittee recommends the next Council participate as any other signatory to that MOU. This means others will determine whether or not it should expire. If it did expire, and the Montana Watershed Coordination Council (MWCC) still wished to report annually to a relevant entity, the next Council could provide such a forum. Given that the MWCC wishes to report its progress annually, one set of reporting could be done at the biennial Watershed Symposium (presuming these continue), and another to the EQC (resulting in biennial reporting to each).

Staff update/comment: The MOU has expired. Coordination continues through the Watershed Coordination Council which meets quarterly.

- Where timely, the next EQC should request continued updates from agency staff on the progress being made on Montana's involvement in the federal Clean Water Action Plan, and what positive or negative effects it might have on interagency coordination in Montana. At the same time, they will request an update on any expected relationship (or "strings") the Plan process results might have on Montanan's ability to access 319, Environmental Quality Incentives Program (EQIP), Conservation Reserve Program (CRP), or other funding programs, and when more might be known about this. The Council could discuss any appropriate action, based upon the information provided.

Staff update/comment: See draft work plan.

- The Subcommittee supports the efforts of the Montana Watershed Coordination Council, and encourages state agencies to dedicate the necessary staff and resources to accomplish Council goals and products. The Subcommittee encourages the completion of specific products and/or services important to Montana (e.g., a biennial watershed symposium, watershed group directory, watershed home page on the Internet, directory of funding sources, annual evaluation and reporting of their efforts, etc.).

Staff update/comment: The EQC could invite the MWCC to present information on their accomplishments. Alternatively, staff currently participate in MWCC meetings and advise EQC members about actions and activities related to the EQC work plan. (See draft work plan.)

- Further EQC oversight of the TMDL program (now and next Interim) should focus on seeing that the program is run efficiently and effectively. A positive first step in this type of oversight would be an examination of the myriad of duplicative efforts related to water quality and watershed projects.

Interaction with Tribes/Other States

- The Subcommittee supports enhanced coordination with tribes in Montana on a government-to-government basis. They encourage enhanced coordination without creating new governmental entities. The next EQC should direct its staff to further evaluate this topic, and potential enhanced or new state/tribal or state/state coordination mechanisms. This evaluation should

include consultation with the National Conference on State Legislatures, the Legislative Council on River Governance, and the EPA's national tribal water quality advisory group, for ideas for enhanced coordination on TMDL development and water quality management in general.

Staff update/comment: As noted in the report, DEQ is coordinating with tribes on TMDLs.

Implications of the Lawsuit

- The Subcommittee suggests to the DEQ that they consider adding a column to the state's 303(d) list to display "Status of Water Quality Improvement Efforts" (or the like). Currently, state progress on TMDL development is only reflected in the 303(d) list when EPA TMDL approval allows that water (or an impaired parameter of it) be removed from the list; and the list is only published every two years (possibly less in the future). This misrepresents Montana's progress in developing TMDLs that are not yet approved. Since the list is now available on-line, such information would allow the list to be kept current and be more reflective of TMDL progress. Entries might be as simple as noting which stage the effort is in (e.g. "getting started," "assessment," "planning", or "TMDL for ____ (name of water body) ____ approved -- to be delisted in ____ (date to be delisted) ____"). If there were only a few major categories for entries, it should not raise too much concern about extra staff time required to enter the data. This might also serve to encourage others to get started on TMDL development, if they see others are progressing.
- The Subcommittee recommends that the next EQC consider continued updates on the status of the TMDL litigation in Montana, as well as other litigation regarding water quality.

Staff update/comment: Included in the draft work plan.

Local Involvement vs. A Mandatory Timeframe

- The next EQC should evaluate progress in the fulfillment of the roles and responsibilities envisioned in HB 546 (see Figure on pp. 103-104), and whether the relationship between the state and local Conservation Districts is effective and efficient.

Staff comment/update: This is a time-intensive task. Given the resources allocated, the Water Policy Subcommittee would need to focus primarily on this issue if it were to take on this task.

- When EQC oversight of HB 546 implementation began, one suggestion DEQ staff made was that the EQC provide assistance in information and education. In this regard, EQC and DEQ staff have been coordinating since early 1998 on how the Subcommittee's *Oversight Report* could be crafted to both meet Subcommittee/Council goals, as well as provide an informational resource for future DEQ/EQC use. Presuming this continues to be the DEQ and EQC interest, the DEQ (and others) should provide further suggestions on how this effort could assist their informational efforts and contribute to clarifying state/local roles. It appears from the recent grant funding response from the EPA that the EPA's focus was on development of specific TMDLs, not on funding statewide informational materials. (Note: DEQ staff already suggested that the EQC prepare a booklet on TMDL case studies -- this report includes 4 case studies, but more could be drafted over the 1999-2000 Interim given supporting resources, interest, and EQC/DEQ priorities.

Staff comment/update: EQC has printed additional copies of the report which DEQ is distributing to interested parties. EQC staff are updating the EQC's water quality guide to include a primer on HB 546 and TMDLs. DEQ publishes a quarterly newsletter that describes how TMDLs are being developed by local groups. The MWCC meetings and web page are a resource for local watershed groups that want to share information.

Funding, Its Use, and the Role of 319 Funds in Program Implementation

- The Subcommittee supports full funding of Montana's TMDL program. They also support the exploration of options to address concerns related to ensuring federal 319 funding allocations maximize nonpoint pollution control benefits on the ground.
- EQC staff should work with the DEQ to document the progress, timing, and potential requirements of the federal Clean Water Action Plan, especially any relationship its requirements may have with the principles and procedures embodied in HB 546 and other statutory language. The Council could continue to track Montana's participation in this process. If inappropriate federal requirements were imposed, or if advocating additional flexibility to accommodate Montana's revised program were beneficial, Council members could coordinate to prepare appropriate correspondence (or propose a joint resolution) to support the state's position in the process. This may also be a topic for the Legislative Leadership Council on River Governance. The Council directed staff to draft a letter to EPA on this issue as soon as possible. (The letter was sent in September 1998. A copy is available from the EQC office in Helena.)

Staff comment: Included in draft work plan.

Local Funding for HB 546 Implementation

- The Subcommittee supports DNRC's funding request for additional watershed assistance grant funding, as well as additional Conservation District administrative (i.e., 223) funds.

Staff comment/update: The 1999 Legislature appropriated additional funds for these programs.

- The EQC should track the activities related to the federal Clean Water Action Plan to determine if any interests they have in assisting with funding at the local level are appropriately addressed through that process. If they wish to influence the process they could provide comments to the Montana group, or consider proposing a Joint Resolution during the Session (if timing is appropriate). (See also recommendations in preceding section -- "Funding, its Use, and the Role of 319 Funds in Program Implementation".)

Staff comment/update: Included in the draft work plan.



A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOMMENDING THAT STATE AGENCIES SERVE AS ROLE MODELS FOR THE IMPLEMENTATION AND REFINEMENT OF BEST MANAGEMENT PRACTICES TO REDUCE NONPOINT SOURCE POLLUTION OF MONTANA'S WATERS; AND RECOMMENDING THAT RELEVANT AGENCIES REPORT RELATED PROGRESS AND ACCOMPLISHMENTS TO THE ENVIRONMENTAL QUALITY COUNCIL PRIOR TO THE NEXT LEGISLATIVE SESSION.

WHEREAS, all Montanans share a responsibility for the protection and enhancement of the capability of Montana's waters to support their designated uses; and

WHEREAS, some land user groups are demonstrating their commitment to that responsibility by collectively developing and implementing voluntary strategies to address water quality protection on lands associated with their industry; and

WHEREAS, Montana's forestry industry is an example of a land user group that has a track record of developing and implementing voluntary best management practices to protect water quality; and

WHEREAS, 10 years of implementation of the voluntary forestry best management practices program, including its strong training and audit components, has resulted in: (1) increased understanding of members of the forest products industry of the impact that their activities might have on water quality; (2) development, implementation, evaluation, and continued refinement of forestry-related practices that can provide cost-effective protection of water quality; (3) a high level of compliance, industrywide, with these voluntary practices; and (4) effective protection of water quality associated with forestry activities on both private and public land; and

WHEREAS, Montana's state agencies should serve as role models for the protection of Montana's water resources and could learn from the efforts of the forestry industry in developing and implementing protective practices.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Montana state agencies with land management or development responsibilities, including responsibilities for road construction and maintenance, be strongly urged to serve as role models for the broad and effective implementation and refinement of best management practices to reduce nonpoint source water pollution in Montana. Activities in this regard may include but are not limited to:

(1) evaluating their current land management and development practices, including those related to roads, parking areas, and trails, to determine what practices are currently used to reduce the potential for nonpoint source water pollution as a direct or indirect result of their management or development activities;

(2) determining what additional practices could be applied that would further reduce the likelihood of nonpoint source pollution of Montana's waters; and

(3) coordinating internally and with other agencies to share current and potential new techniques, training staff on the implementation of these techniques, and otherwise enhancing the statewide application and efficiency of best management practices for purposes of reducing nonpoint source water pollution in Montana, thereby further enhancing Montana's ability to support the designated uses of its waters.

BE IT FURTHER RESOLVED, that the Environmental Quality Council make a priority of requesting Montana state agencies with land management or land development responsibilities to report to the Council prior to the next legislative session on the respective agencies' progress and accomplishments related to implementing and refining best management practices to control nonpoint source pollution of Montana's waters.

- END -